

ATTORNEY DOCKET NO. T9947

## DECLARATION, POWER OF ATTORNEY AND PETITION

We, Thomas F. CALTON, M.D., Matthew M. LOWE, Michael D. ENSIGN, and Scott SHAVER, declare: that we are citizens of the United States of America; that our residences and post office addresses are 2745 Fillmore Avenue, Ogden, Utah 84403; 12187 South Business Park Drive, Draper, Utah 84020; 12187 South Business Park Drive, Draper, Utah 84020; and 1130 West 11th Court, Broomfield, Colorado 80020, respectively; that we verily believe we are the original, first, and joint inventors of the subject matter of the invention or discovery entitled KNEE BALANCING BLOCK, for which a patent is sought and which is described and claimed in the specification attached hereto; and granted Serial No. 10/618,521 (we hereby authorize the attorneys of Clayton, Howarth & Cannon, P.C., to insert said serial number when known); that we have reviewed and understand the contents of the above-identified specification, including the claims; and that we acknowledge the duty to disclose information which is material to the examination of this application in accordance with Section 1.56(a) of Title 37 of the Code of Federal Regulations.

We hereby claim the benefit under Section 119(e) of Title 35 of the United States code of the earlier filed application Serial No. 60/398,289, filed July 23, 2002, and of the earlier field application Serial No. 60/474,454, filed May 30, 2003; and, insofar as the subject matter of each of the claims of these applications

is not disclosed in the earlier filed pending application in the manner provided by the first paragraph of Section 112 of Title 35 of the United States Code, we acknowledge the duty to disclose material information, as defined in Section 1.56 of Title 37 of the Code of Federal Regulations, which occurred between the filing dates of the earlier filed applications and the filing date of this application.

We declare further that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful, false statements may jeopardize the validity of the application or any patent issuing thereon.

We hereby appoint as our attorneys and/or patent agents, Grant R. Clayton, Registration No. 32,462; Alan J. Howarth, Registration No. 36,553; Karl R. Cannon, Registration No. 36,468; Clifford B. Vaterlaus, Registration No. 47,261; Terrence J. Edwards, Registration No. 50,254; and Brett J. Davis, Registration No. 46,655; all with full power of substitution and revocation, to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith.

Please direct all future correspondence in connection with this application to:

Customer No. 20449

Please direct all telephonic and facsimile communications to:

Karl R. Cannon  
Telephone: (801)255-5335  
Facsimile: (801) 255-5338

Please reference the below provided attorney docket number in all communications:

T9947

Wherefore, we pray that Letters Patent be granted to us for the invention or discovery described and claimed in the foregoing specification and claims, declaration, power of attorney, and this petition.

Signed at Asheville, Vt, this  
(City) (State)  
31<sup>st</sup> day of July, 2003.

INVENTOR:

Thomas F. Calton  
Thomas F. CALTON, M.D.

Signed at Draper, UT, this  
(City) (State)


11 day of July, 2003.

INVENTOR:

Matthew M. Lowe  
Matthew M. LOWE

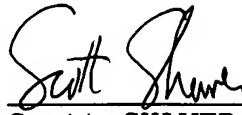
Signed at Salt Lake City, Utah, this  
(City) (State)  
11 day of July, 2003.

INVENTOR:

  
\_\_\_\_\_  
Michael D. ENSIGN

Signed at LOUISVILLE, COLORADO, this  
(City) (State)  
16<sup>th</sup> day of July, 2003.

INVENTOR:



\_\_\_\_\_  
Scott SHAVER

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Attorney Docket No. T9947

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: THOMAS F. CALTON, M.D. )  
et al. )  
TITLE: KNEE BALANCING BLOCK )  
SERIAL NO.: 10/618,521 ) CERTIFICATE UNDER 37  
FILED: July 11, 2003 ) C.F.R. § 3.73(b) TO  
EXAMINER: \_\_\_\_\_ ) ESTABLISH RIGHT OF  
ART UNIT: 3731 ) ASSIGNEE TO TAKE ACTION

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Sir:

To establish its right to take action before the Office in the above-captioned matter, Ortho Development Corporation certifies that it is the assignee of the entire right, title and interest in the patent application identified above by virtue of either:

A.[X] An assignment from the inventors of the patent application identified above. The assignment was recorded in the Patent and Trademark Office at Reel

Certificate of Deposit Under 37 C.F.R. § 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to Mail Stop Missing Parts, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on the 30 day of December, 2003.

  
Karl R. Cannon  
Attorney Registration No. 36,468  
Attorney for Applicant



\_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.

B. ☐ A chain of title from the  
\*\*\*[inventor(s)/applicant(s)]\*\*\* of the  
\*\*\*[patent/trademark application]\*\*\* identified  
above, to the current assignee as shown below:

1. From: \_\_\_\_\_ To: \_\_\_\_\_

The document was recorded in the Patent and  
Trademark Office at Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for  
which a copy thereof is attached.

2. From: \_\_\_\_\_ To: \_\_\_\_\_

The document was recorded in the Patent and  
Trademark Office at Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for  
which a copy thereof is attached.

3. From: \_\_\_\_\_ To: \_\_\_\_\_

The document was recorded in the Patent and  
Trademark Office at Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for  
which a copy thereof is attached.

C. ☒ Copies of assignments or other documents in the  
chain of title are attached.

The undersigned (whose title is supplied below) is empowered  
to sign this certificate on behalf of the assignee.

I hereby authorize the attorneys of Clayton, Howarth & Cannon,  
P.C., to insert said serial number when known.

I hereby declare that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements, and the like so made, are punishable by fine or imprisonment, or both, under Section 1001, Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated this 4<sup>th</sup> day of August, 2003.

Ortho Development Corporation

By Bt Bartholomew  
Brent Bartholomew  
Chief Financial Officer

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A S S I G N M E N T

WHEREAS, Thomas F. CALTON, M.D., Matthew M. LOWE, Michael D. ENSIGN, and Scott SHAVER, citizens of the United States of America having post office addresses of 2745 Fillmore Avenue, Ogden, Utah 84403; 12187 South Business Park Drive, Draper, Utah 84020; 12187 South Business Park Drive, Draper, Utah 84020; and 1130 West 11th Court, Broomfield, Colorado 80020, respectively, have invented a method and apparatus entitled KNEE BALANCING BLOCK, hereinafter called the "invention," preferred embodiments of which are disclosed in a United States patent application executed on July 31, 2003 and being assigned application serial no. 10/618,521 and filed on July 11, 2003, which claims the benefit under Section 119(e) of Title 35 of the United States code of the earlier filed application Serial No. 60/398,289, filed July 23, 2002, and of the earlier field application Serial No. 60/474,454, filed May 30, 2003, and identified as File No. T9947 of the law firm, Clayton, Howarth & Cannon, P.C., P.O. Box 1909, Sandy, Utah 84091 (We hereby authorize the attorneys of Clayton, Howarth & Cannon, P.C. to insert said serial number, filing date and execution date when known).

WHEREAS, Assignee Ortho Development Corporation, a Utah corporation, organized and existing under the laws of the State of

WHEN RECORDED RETURN TO:

Karl R. Cannon T9947  
Clayton, Howarth & Cannon, P.C.  
P.O. Box 1909  
Sandy, Utah 84091

Utah, located at 12187 South Business Park Drive, Draper, Utah 84020, is desirous of acquiring the entire right, title and interest in the invention;

NOW THEREFORE, in consideration of one dollar (\$1.00) and other good and valuable consideration paid to us by the Assignee, the receipt and sufficiency of which is hereby acknowledged, WE HEREBY ASSIGN TO THE ASSIGNEE:

The entire right, title and interest in said invention and in the above-identified United States patent application and in all divisions, continuations and continuations-in-part of said application, or reissues or extensions of Letters Patent or Patents granted hereon, and in all corresponding applications filed in countries foreign to the United States, and in all patents issuing thereon in the United States and Foreign countries.

The right to file foreign patent applications on said invention in its own name, wherever such right may be legally exercised, including the right to claim the benefits of the International Convention for such applications.

We hereby authorize and request the United States Commissioner for Patents, and such Patent Office officials in foreign countries as are duly authorized by their patent laws to issue patents, to issue any and all patents on said invention to the Assignee as the owner of the entire interest, for the sole use and behoof of the said Assignee, its successors, assigns and legal representatives.

We hereby agree, without further consideration and without expense to us, to sign all lawful papers and to perform all other

WHEN RECORDED RETURN TO:

Karl R. Cannon T9947  
Clayton, Howarth & Cannon, P.C.  
P.O. Box 1909  
Sandy, Utah 84091

lawful acts which the Assignee, or the Assignee's successors, assigns and legal representatives, may request of us to make this Assignment fully effective, including, by way of example but not of limitation, the following:

Prompt execution of all original, divisional, substitute, reissue, and other United States and foreign patent applications on said invention, and all lawful documents requested by the Assignee, or the Assignee's successors, assigns and legal representatives, to further the prosecution of any of such patent applications.

Cooperation to the best of our ability in the execution of all lawful documents, the production of evidence, nullification, reissue, extension, or infringement proceedings involving said invention.

WHEN RECORDED RETURN TO:

Karl R. Cannon T9947  
Clayton, Howarth & Cannon, P.C.  
P.O. Box 1909  
Sandy, Utah 84091

This assignment and agreement shall be binding upon our heirs  
and legal representatives.

Executed this 31st day of July, 2003, at

Ogden, Utah  
(City, State)

Thomas F. Calton  
Thomas F. CALTON, M.D.

STATE OF Utah )  
COUNTY OF Weber ) ss.

On July 31, 2003 before me personally appeared Thomas  
F. CALTON, M.D., known to me to be the person described and who  
signed the foregoing Assignment in my presence and acknowledged  
under oath before me that he has read the same and knows the  
contents thereof and that he executed the same as his free act and  
deed and for the purposes set forth therein.

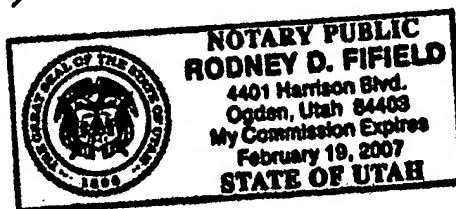
Rodney D. Fifield  
NOTARY PUBLIC

My Commission Expires:

February 19, 2007

Residing at

Ogden, Utah



WHEN RECORDED RETURN TO:

Karl R. Cannon T9947  
Clayton, Howarth & Cannon, P.C.  
P.O. Box 1909  
Sandy, Utah 84091

Executed this 11 day of July, 2003, at  
Draper, UT  
(City, State)

Matthew M. Lowe  
Matthew M. LOWE

STATE OF Utah )  
COUNTY OF Salt Lake ) : ss.

On 11<sup>th</sup> July, 2003, before me personally appeared Matthew M. LOWE, known to me to be the person described and who signed the foregoing Assignment in my presence and acknowledged under oath before me that he has read the same and knows the contents thereof and that he executed the same as his free act and deed and for the purposes set forth therein.

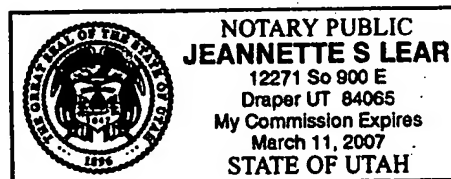
Jeannette S Lear  
NOTARY PUBLIC

My Commission Expires:

03-11-2007

Residing at

12271 So 900 E




WHEN RECORDED RETURN TO:

Karl R. Cannon T9947  
Clayton, Howarth & Cannon, P.C.  
P.O. Box 1909  
Sandy, Utah 84091

Executed this 11<sup>th</sup> day of July, 2003, at

<sup>MO 7/11/03</sup>  
Salt Lake City, Ut.  
(City, State)

  
\_\_\_\_\_  
Michael D. ENSIGN

STATE OF Utah )  
COUNTY OF Salt Lake ) : ss.

On 11<sup>th</sup> July, 2003, before me personally appeared Michael D. ENSIGN, known to me to be the person described and who signed the foregoing Assignment in my presence and acknowledged under oath before me that he has read the same and knows the contents thereof and that he executed the same as his free act and deed and for the purposes set forth therein.

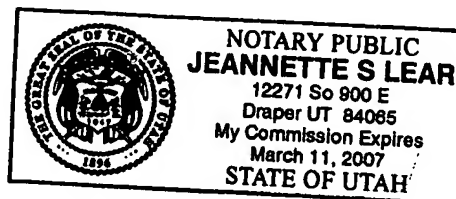
  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

03-11-2007

Residing at

12271 So 900 E



WHEN RECORDED RETURN TO:

Karl R. Cannon T9947  
Clayton, Howarth & Cannon, P.C.  
P.O. Box 1909  
Sandy, Utah 84091



Executed this 15<sup>th</sup> day of AUGUST, 2003, at  
LOUISVILLE, COLORADO.  
(City, State)

Scott Shaver  
Scott SHAVER

STATE OF Colorado )  
: ss.  
COUNTY OF Boulder )

On August 15, 2003, before me personally appeared Scott SHAVER, known to me to be the person described and who signed the foregoing Assignment in my presence and acknowledged under oath before me that he has read the same and knows the contents thereof and that he executed the same as his free act and deed and for the purposes set forth therein.

Michael D. Haas  
NOTARY PUBLIC

8-15-03

My Commission Expires:

8-14-2004

Residing at  
2710 S. Lafayette St.  
Denver, CO 80210

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WHEN RECORDED RETURN TO:

Karl R. Cannon T9947  
Clayton, Howarth & Cannon, P.C.  
P.O. Box 1909  
Sandy, Utah 84091



DECLARATION CLAIMING SMALL ENTITY STATUS  
FOR A SMALL BUSINESS CONCERN

I, Brent BARTHOLOMEW, hereby declare: that I am Chief Financial Officer of Ortho Development Corporation, a corporation of the State of Utah and having a principal place of business at 12187 South Business Park Drive, Draper, Utah 84020; I am empowered to act on behalf of said corporation; and that said corporation qualifies as a small business concern as defined in 13 C.F.R. § 121.3-18 and 37 C.F.R. § 1.9(d), for purposes of paying reduced fees to the Patent and Trademark Office under Section 41(a) and (b) of Title 35, United States Code, in that the number of employees of said corporation, including those of its affiliates, does not exceed 500 persons. I understand that, for purposes of this declaration, (1) the number of employees is the average over the previous fiscal year of the number of persons employed on a full-time, part-time, or temporary basis during each of the pay periods of the fiscal year, and that (2) two business concerns are considered to be affiliates of each other when one business concern either directly or indirectly controls or has the power to control the other, or when a third party or parties control or have the power to control both business concerns.

I further declare that all rights, title, and interest relating to the invention entitled KNEE BALANCING BLOCK, invented by Thomas F. CALTON, M.D., Matthew M. LOWE, Michael D. ENSIGN, and Scott SHAVER, as described in the patent application filed

concurrently herewith have been conveyed to and currently remain with said corporation.

I acknowledge the duty to file, in the above-mentioned application or any patent issued in respect thereof, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of (1) the issue fee or (2) any maintenance fee due after the date on which status as a small entity is no longer appropriate. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful, false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this declaration is directed.

Signed at DRAPER, UTAH, this 4<sup>th</sup> day  
(City) (State)  
of AUGUST, 2003.

Ortho Development Corporation

By: Bt Bartholomew  
Brent Bartholomew  
Chief Financial Officer